the Georgia Supreme Court had held that taking interest upon short-time paper in advance at eight per cent was usurious. (*Loganville Banking Co.* v. *Forrester*, 143 Ga. 302, 84 S. E. 961.) The plaintiff, having sued in the state court to recover the penalty allowed by the National Bank Act, on *certiorari*, *Held*, that the transaction does not violate the statute. Pitney, Clarke, and Brandeis, JJ., dissenting. *Evans* v. *National Bank of Savannah*, U. S. Sup. Ct., No. 67, October Term, 1919.

The sole question seems to be what is meant by the words of the National Bank Act, "at the rate of interest allowed by the laws of the state where the bank is located." In determining what are the laws of a state, the Supreme Court usually follows the latest state decision upon the question. *Union National Bank* v. *Louisville, Etc. R. R. Co.*, 163 U. S. 325; *Bucher* v. *Cheshire R. R. Co.*, 125 U. S. 555. The "rate of interest" has been construed to include the mode of charging interest. Where a state statute declared that interest compounded oftener than annually was usury, a note bearing interest compounded semi-annually was held usurious under the National Bank Act, although the total interest did not exceed the maximum allowed by State law. *Citizens National Bank* v. *Donnell*, 195 U. S. 369. Furthermore, the obvious intent of the framers of the National Bank Act was that national banks should charge as much but not more than state banks. In favor of the principal case, it may be said that, contrary to the Georgia case, the weight of authority and long-established business custom is that the taking of interest in advance at the maximum rate is not usury. *Bank of Newport* v. *Cook*, 60 Ark. 288, 30 S. W. 35; *Stark & Wales* v. *Coffin*, 105 Mass. 328. But the majority opinion does not purport to question the correctness of the Georgia decision. Thus the dissenting opinion seems the better one.

BANKS AND BANKING — NATIONAL BANKS — POWER OF NATIONAL BANK TO ACQUIRE AND OPERATE A STREET RAILWAY. — A street railway was built over certain streets in a village under a twenty-five year franchise granted by the village. The railway was twice placed in the hands of a receiver, and under the second receivership was sold to a national bank, which bought in the property in order to protect the bonds of the company which it owned. The bank continued to operate the road for a short time. Failing to find a purchaser, it was about to discontinue operation and dismantle the road. The village brought suit to enjoin the discontinuance. The bank pleaded its lack of power to assume the obligations of the franchise to operate the road. *Held*, that the bank be authorized to discontinue operation and dismantle the road. *Gress* v. *Village of Ft. Loramie*, 125 N. E. 112 (Ohio).

For a discussion of this case, see NOTES, p. 718, *supra*.

CONFLICT OF LAWS — CAPACITY — NOTE MADE BY MARRIED WOMAN IN ONE STATE PAYABLE IN ANOTHER. — An action was brought in Virginia upon a promissory note executed and delivered by a married woman in Tennessee, where she was without capacity to contract. The note was payable in Virginia, where the disabilities of coverture had been removed. *Held*, that coverture is no defense. *Poole* v. *Perkins*, 101 S. E. 240 (Va.).

A fair degree of unanimity has obtained with reference to the question of the controlling law as to capacity to enter into a personal contract. In the United States, in case of conflict between the law of the domicile and the law of the place where the contract is made, the question is resolved with reference to the latter. *Bell* v. *Packard*, 69 Me. 105; *Milliken* v. *Pratt*, 125 Mass. 374. And as the existence of a contract must depend, in our system of territorial law, upon the effect conferred by the law in force where the agreement is entered upon, the *lex loci contractus* controls, as to capacity, in case of con-

flict between that law and the law of the place of performance. *Union Nat. Bank* v. *Chapman*, 169 N. Y. 538, 62 N. E. 672; *Hager* v. *Nat. Ger. Am. Bank*, 105 Ga. 116, 31 S. E. 141. *Contra*, *Mayer* v. *Roche*, 77 N. J. L. 681, 75 Atl. 235. The court seems, in the instant case, to have failed to distinguish clearly between capacity and the broader question of the validity of contracts generally — such as the effect of particular provisions of a contract which admittedly exists. There have been various holdings as to the latter: that the governing law is that of the place of making, of the place of performance, or of the place intended by the parties to the contract. See Joseph H. Beale, "What Law Governs the Validity of a Contract," 23 HARV. L. REV., 79-103, 194–208. And there is considerable force in the contention that this question, too, should be governed by the law of the place where the agreement is made. See Beale, 23 HARV. L. REV., 270–272. Considerations of convenience have doubtless influenced the court in the principal case, but the decision can hardly be justified on principle or authority.

CONSTITUTIONAL LAW — CONFLICT OF LAWS — STATUTE TAKING AWAY RIGHT OF ACTION ARISING IN ANOTHER STATE FOR DEATH BY WRONGFUL ACT. — The plaintiff's intestate was killed in Ohio through the negligence of the defendant, the Ohio statutes giving a right of action to the administrator for death by wrongful act. The plaintiff brought this action in Illinois under a statute allowing suits for the recovery of damages for such a death even though occurring without the state. Pending an appeal and before any final judgment, the Illinois statute was amended so as to forbid the institution or prosecution of any such action arising outside of the state, though allowing actions for such deaths within the state. *Held*, that the plaintiff may not recover. *Wall* v. *Chesapeake & O. Ry. Co.*, 125 N. E. 20 (Ill.).

A statute is not brought into conflict with the Fourteenth Amendment by the mere fact that it is retrospective in its operation. *League* v. *Texas*, 184 U. S. 156. But vested rights of property, regardless of their source, whether contractual or otherwise, come within its protection. See *Pritchard* v. *Norton*, 106 U. S. 124, 132. See also TAYLOR, DUE PROCESS OF LAW, §§ 224 *et seq.* A statute may deprive a person of his property as effectually by taking away all means of enforcement as by denying its existence. *Ettor* v. *Tacoma*, 228 U. S. 148. Thus a repealing act which takes away all remedy for a right of action for injuries to property is unconstitutional. *Ettor* v. *Tacoma*, *supra*. It has been held, however, that there can be no vested right in a claim of damages for personal injuries or death. *Carson* v. *Gore-Meenan Co.*, 229 Fed. 765. But this seems too broad. Where such a right of action is assignable or survives, it would seem clearly to be "property," even though not reduced to judgment; and a statute taking away such a local cause of action would be unconstitutional. See *Louisiana* v. *New Orleans*, 109 U. S. 285, 291; *Angle* v. *Chicago, &c. Ry.*, 151 U. S. 1, 19. The Constitution requires that any policy a state may adopt as to the limits of the jurisdiction of its courts must operate in the same way on its own citizens and those of other states. *Blake* v. *McClung*, 172 U. S. 239. But in other respects each state may determine how far its courts, having jurisdiction of the parties, shall hear and decide transitory actions, where the cause of action has arisen outside of the state. *Chambers* v. *Baltimore & O. R. Co.*, 207 U. S. 142; *St. Louis, &c. R. Co.* v. *Taylor*, 210 U. S. 281. See 17 HARV. L. REV. 54. Accordingly, the principal case does not involve any question of "due process" but merely illustrates the old principle that the laws of one state can have no extraterritorial effect except by the permission of other states. *Paul* v. *Virginia*, 75 U. S. (8 Wall.) 168; *Huntington* v. *Attrill*, 146 U. S. 657. See 32 HARV. L. REV. 172. It would seem, however, that the court might have avoided a harsh result by so interpreting the statute as to avoid retrospective operation.